

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
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GEORGETOWN, DELAWARE 19947
TELEPHONE (302) 856-5264

November 5, 2018

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**Re: *Fritz v. Cincinnati Insurance Co.*,
C.A. No. S16C-11-006**

On Plaintiff's Motion for Reargument: DENIED

Date Submitted: September 4, 2018
Date Decided: November 5, 2018

Dear Counsel,

Pending before the Court is a Motion for Reargument. On August 22, 2018, the Court issued a decision granting Defendant's Motion for Summary Judgment. Plaintiff subsequently filed a timely motion for reargument pursuant to Superior Court Civil Rule 59(e), alleging the Court misapplied the applicable law.

A motion for reargument will be granted if the Court has "overlooked a controlling precedent or legal principles, or misapprehended the law or facts such as would have changed the outcome of the underlying decision."¹ A movant may neither present new arguments nor rehash those already presented to the Court.²

Plaintiff argues the Court improperly relied upon the case *Henry v. The Cincinnati Insurance*

¹ *Radius Services, LLC v. Jack Corrozi Constr.*, 2010 WL 703051, at * 1 (Del. Super. Ct. Feb. 26, 2010) (citation omitted).

² *Id.*

*Co.*³ in denying its motion for summary judgment. In support of its contention, Plaintiff points out that the issue raised in *Henry* is different from the one raised in the case at bar. Specifically, Plaintiff observes the issue in *Henry* was whether the employee's claim for underinsured motorist ("UIM") coverage was subject to the pre-amendment or post-amendment version of Delaware's Workers' Compensation Act ("WCA"). In this case, Plaintiff argues employer's self-insured status distinguishes it from precedent.

The Court understands that the matter Plaintiff raises in this case was not presented to the *Henry* court. Nevertheless, as here, the employer in *Henry* was self-insured. Thus, the language of the holding squarely addresses the situation at bar:

[T]he pre-amendment version of the WCA applies to Employee's receipt of workers' compensation benefits, and subsequent claim to UIM benefits. Under the exclusivity clause of the pre-amendment version of the WCA, Employee is prohibited from receiving both workers' compensation benefits and UIM benefits under the Employer's insurance policy.⁴

The bottom line is that the Court could not accept Plaintiff's argument in this case without contradicting the language of the *Henry* decision. The Superior Court follows its prior decisions "except for urgent reasons and upon clear manifestation of error."⁵ For this reason, the Defendant's motion for summary judgment was granted and Plaintiff's motion for reargument must be DENIED.

IT IS SO ORDERED.

Very truly yours,



Richard F. Stokes

oc: Prothonotary

³ 2018 WL 3640835 (Del. Super. Ct. July 31, 2018).

⁴ *Id.* at * 4.

⁵ *Wilmington Amusement Co. v. Pacific Fire Ins. Co.*, 21 A.2d 194, 196 (Del. Super. 1941).